

## TELECASH MERCHANT / BILLER / BULK PAYMENT TERMS AND CONDITIONS

These terms and conditions form the contract between:

Limited Reg No \_\_\_\_\_

of P.O. Box \_\_\_\_\_ City/Town \_\_\_\_\_  
(hereinafter Merchant, which expression shall include its successors in title and assigns) and Telecel Zimbabwe (Pvt) Limited of No 148 Seke Road Graniteside Harare (hereinafter **Telecel**, which expression shall include its successors in title and assigns). These Terms and Conditions together with the annexures hereto (together "the Agreement") contains the complete terms and conditions that apply to Merchant participation in Telecel's TeleCash mobile payment system (hereinafter Pay Merchant Services) and supersedes all other agreements entered into between the Merchant and Telecel in relation to the provision of TeleCash Pay Merchant Services. By executing this document the Merchant agrees that it is affirmatively stating that it has carefully read and understood the terms and conditions set forth herein and agrees to be bound by the said terms and conditions.

### 1. DEFINITIONS AND INTERPRETATION

In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

- 1.1 **Cash** means the United States dollar (USD). Telecel will announce if there is a change in currency in use by TeleCash
- 1.2 **Confidential Information** means, without limitation, all information, software, data, manuals, concepts relating to marketing methods, products, developments, business and financial affairs and trade secrets, and other information of value to a party and not generally known, (whether or not designated as "confidential information" by any Party and whether written, oral or in electronic form) and any other information clearly designated by a Party as "confidential information" or that is evidently confidential by its nature or the nature of its disclosure, and includes the terms of this Agreement;
- 1.3 **Customer** means a TeleCash user who uses the TeleCash System to make Payments or perform Payments to the Merchant and Customers shall be construed accordingly;
- 1.4 **Customer TeleCash Account** means the TeleCash account operated by the Customer whose access is through the TeleCash menu on the Customer's mobile phone and through which the Customer may effect Payment instructions to the Merchant;
- 1.5 **Effective Date** means the date first appearing on this Agreement;
- 1.6 **E-Money** means the electronic value issued by Telecel and representing an entitlement to an equivalent amount of the Cash held by the Custodial Trustee in respect of the acquisition of such electronic value;
- 1.7 **Intellectual Property Rights** means, in respect of each Party, such Party's proprietary rights, title and interest in and to any and all names, logos, trademarks, copyrights, patents and all other intellectual property of whatever nature, description or form, vesting in that Party as at the Effective Date or acquired by such Party at any time after the Effective Date;
- 1.8 **KYC Test** means the Know Your Customer due diligence performed by the Merchant to ascertain the identity of Customers at the point of sale requiring the viewing and matching of ID information with the TeleCash account from which a Payment originates;
- 1.9 **Merchant's TeleCash Account or TeleCash Account** means the TeleCash Account operated by the Merchant and through which the Merchant receives Payments from Customers;
- 1.10 **Merchant code** means a destination code or numbering plan created by Telecel for the identification of TeleCash Merchant Accounts
- 1.11 **MSISDN** means the Mobile Subscriber Integrated Services Digital Network number issued to the TeleCash User which uniquely identifies the TeleCash User on the Telecel Network and is used to connect the Customer with other subscribers;
- 1.12 **Payment** means the transfer of money from a Customer to the Merchant for the payment of goods and merchandise by following prompts on the Merchant section of the Customer's TeleCash menu;
- 1.13 **TeleCash System or TeleCash** means the Payment system operated by Telecel providing the TeleCash Merchant Services;
- 1.14 **TeleCash User or User or TeleCash System Participant** means either of the Merchant or the Customer or any other person including Telecel participating in the TeleCash System;
- 1.15 **TeleCash Merchant Service** means the Payment services provided by Telecel which the Merchant will use in order to receive Payments from Customers and may be used for other transactions as necessary;
- 1.16 **Transaction** means (as the context requires) Payments made by Customers to the Merchant
- 1.17 **Trust Account(s)** means the custodial account or accounts maintained by Kingdom Bank into which Cash sums represented in the TeleCash System are held in by the Custodial Trustee for and on behalf of all TeleCash System Participants;
- 1.18 **Web Interface** means the TeleCash website through which the Merchant's TeleCash Account details including Transactions and account balances can be viewed and through which certain Transactions can be completed;

### 2. SCOPE OF MERCHANT AGREEMENT

Telecel hereby appoints and retains the Merchant, on a non-exclusive basis, to perform functions, services and such other acts as the Merchant is specifically required to do pursuant to the terms of this agreement. The Merchant agrees to perform its duties under the supervision of Telecel and Kingdom Bank within Zimbabwe commencing .....20...., subject to termination by the Parties

### 3. MERCHANT'S RIGHTS AND OBLIGATIONS

- 3.1 The Merchant shall forthwith upon execution of this Agreement, if not already done prior to such execution, register with Telecel as a Customer and have an Telecel line to facilitate registration as an Telecel mobile money Merchant. The Merchant shall market the TeleCash Services offered by Telecel, including any other products and services as may be determined by Telecel and its partners, from time to time.

- 3.2 The Merchant shall be obliged to furnish financial transaction and float liquidity management reports, and other regulatory reporting requirements prescribed by the Bank and monetary authorities from time to time.
- 3.3 The Merchant's outlets shall be staffed by appropriately qualified and trained staff members. Should Telecel organise training for Outlet staff, the Merchant will ensure that Outlet staff are in attendance. The Merchant shall not do or omit to do anything which could reasonably be regarded as inconsistent with this obligation.
- 3.4 The merchant shall accept TeleCash payments from customers for goods and services bought.
- 3.5 The Merchant shall not display or procure the display of any advertising or promotional material pertaining to the subject matter of this Agreement, without obtaining the prior written approval of Telecel as to the format and content of such material.
- 3.6 The Merchant shall actively participate in and promote all TeleCash Services special offers and packages offered by Telecel from time to time.
- 3.7 The Merchant shall furnish Telecel with written progress reports detailing the conduct of its activities under this Agreement promptly upon being requested to do so by Telecel.
- 3.8 The Merchant shall comply, at its own cost and expense, with all laws, licence conditions and the requirements of any legislative body or government, provincial, regional or local authority relating to any of the matters contemplated in this Agreement.
- 3.9 The Merchant shall exercise full control over and take full responsibility for its employees, their acts and omissions.
- 3.10 The Merchant shall compile any reports, details, schedules, forecasts, statistics and any other necessary information required for regulatory purposes and these shall be verified and signed by the Proprietor or Director or appointed Manager of the Merchant as true and correct in all respects.
- 3.11 The Merchant shall not to itself grant any discount or rebate pertaining to any customer nor offer such a discount or rebate without the prior written consent of Telecel even if the Merchant is prepared to do so at its own cost,
- 3.12 Where the Merchant gets involved in money laundering, terrorist financing or any unlawful activities not governed by this agreement; the Merchant shall be solely liable for any such illegally perpetrated activities. Telecel will not, in any way be party or held liable to such illegal activities.

#### **4. OBLIGATIONS OF TELECEL**

##### **Telecel shall:**

- 4.1 Ensure that the Mobile Money Transfer and Payment System operate effectively in accordance with the provisions of the TeleCash Procedures Manual.
- 4.2 Ensure that adequate marketing campaign material is available for use by the Merchants.
- 4.3 Have a fully operational Call Centre manned by qualified employees and/or automated systems to assist in the resolution of problems related to the TeleCash Services.
- 4.4 Ensure that the Call Centre is open for query resolution between 0800hrs and 0000hrs on Mondays to Sundays, which operating times may be reviewed by Telecel from time-to-time.
- 4.5 Telecel reserves the right to disconnect the Merchant from Telecel's network at any time, if it determines, at its sole discretion that the Merchant's licence is being used unlawfully or for purposes other than in connection with the TeleCash Services or that the Merchant is not complying with the terms and conditions of this agreement.
- 4.6 Telecel excludes warranties of all kinds and shall not be liable for any costs, loss, liability or damage whether direct, special or consequential whatsoever and howsoever arising whether from any suspension or termination of this Agreement or otherwise.
- 4.7 Telecel shall have the right at any time during the contract period to inspect the Merchant's premises, Outlets and business operations to ensure compliance with the terms of this Agreement.
- 4.8 Telecel will train outlet staff so that they are proficient with TeleCash before they start offering the TeleCash services to the market. Telecel will meet all expenses related to the training venue and training material, while the Merchant meets all travel and accommodation expenses incurred by their officers when they attend training.

#### **5. ACTIVATION OF MERCHANT ACCOUNT**

- 5.1 This agreement comes into effect upon activation of the TeleCash Merchant Account by Telecel following the passing of all KYC vetting procedures conducted on the Merchant by Telecel.
- 5.2 Prior to activation of the TeleCash Merchant Account, the Merchant shall ensure it has provided Telecel with the necessary Know Your Customer (KYC) documents as may be prescribed by Telecel.
- 5.3 Telecel shall carry out the necessary due diligence following which, if satisfied as to the sufficiency of the KYC documents provided by the Merchant, shall activate the Merchant's Account.
- 5.4 If the Merchant fails to produce the necessary KYC documents as set out in 4.2 above, or fails to satisfy the minimum KYC requirements, Telecel will refuse to activate the TeleCash Merchant account and accordingly advise the Merchant as such (in which case this Agreement shall be null and void). For the avoidance of doubt, Telecel's refusal to activate the TeleCash Merchant Account shall neither confer on the Merchant any right to contest Telecel's decision nor give rise to any legal claim against Telecel under this Agreement.

#### **6. CHARGES**

Telecel will prescribe a charge for the Merchant to use the TeleCash service for receiving payment for goods and services

#### **7. COMMISSION**

- 7.1 The commission shall be paid each month; a statement shall be rendered monthly by Telecel to the Merchant which statement shall show all income and disbursements.
- 7.2 The commission shall be reviewed by Telecel from time to time at its discretion.

#### **8. INDEPENDENT CONTRACTOR**

- 8.1 The Parties acknowledge that, save for the duties and powers of the Merchant as stated in clause 3, hereof nothing in this Agreement shall be construed to create a relationship of employment or partnership whatsoever between the Parties, whether for tax or any other purpose. Subject to clause 3 hereof neither Party shall have the right to bind the other to any Agreement with a third Party or to incur any obligation or liability on behalf of the other Party.

## **7. CONFIDENTIALITY**

7.1 Each party undertakes and warrants that it will treat as confidential all information related to and received from customer transactions and Telecel, which it acquires as a result of the operation of this Agreement and to afford it the same degree of confidential treatment as it affords to its own confidential information. Neither party will reveal any confidential information of the other to any third party, without the express written consent of the disclosing party, except where such information is already in the public domain, has been legally acquired by the third party, or where disclosure of the confidential information is ordered by a court or other competent authority.

## **8. SECURITY MANAGEMENT**

8.1 In the event of loss of the Merchant's SIM card, the Merchant is required to inform Telecel immediately so that the SIM card is blocked. The Merchant can contact the Telecel call centre or send an e-mail to [telecash@telecel.co.zw](mailto:telecash@telecel.co.zw). Reporting immediately will prevent unauthorised use. The Merchant will be liable for any losses and costs incurred before the disconnection of the SIM card is made by Telecel.

8.2 The Merchant will be liable for any losses and costs incurred before they notify Telecel.

8.3 The Merchant is responsible for securing their TeleCash and cash float and the cell phone used for mobile money transaction. Telecel will not be liable for any loss of cash or other valuables from the Merchant's premises.

## **9. BREACH**

9.1 Telecel shall have the right to terminate the Merchant Agreement in the event that the Merchant:

9.2 Commits any act of fraud or theft against customers, Telecel or involving the use of the Telecel mobile money facility; and/or

9.3 Fails to meet Merchant requirements set by Telecel and or for two consecutive months; and/or

9.4 Commits an act that brings Telecel or Kingdom Bank into disrepute; and/or

9.5 Fails to perform any of its obligations in terms of this Agreement.

## **10. TERMINATION**

10.1 If the Merchant is in breach of the provisions of clause 9 hereof, Telecel may terminate this Agreement immediately and thereafter inform the Merchant in writing of reasons thereof.

10.2 Either party may also terminate the merchant Agreement by giving at least 30 days' notice to the other party.

## **11. WARRANTIES, INDEMNITIES & LIMITATIONS OF LIABILITY**

11.1 Each of the Parties represents and warrants that none of its senior officers or directors (i) has ever been convicted of any crime (other than minor traffic offences); and (ii) has ever been charged, convicted of (or pleaded guilty or no contest to) any crime relating to fraud, embezzlement, theft, money laundering, financing terrorism or terrorist organizations, receiving stolen property, or illegal drugs or other controlled substances. Each Party shall, if required, notify the other in writing within 48 hours after any of these representations and warranties ceases to be true.

11.2 The Merchant warrants that it has obtained all the necessary management, board or, where necessary, regulatory approvals to use the TeleCash Merchant Service for the receipt of Payments from Customers.

11.3 Each party shall indemnify the other, and keep each other indemnified, from and against any and all loss, damage or liability, whether criminal or civil, suffered, any legal fees and costs incurred by the other resulting from a material breach of this Agreement by the party at fault including breaches caused by any act, neglect or default of a party or any third party claim in respect of any matter arising from any person's conduct, provided that the liability has not been incurred directly through any default either party in relation to its obligations under this Agreement.

11.4 Without prejudice to the foregoing, the Merchant shall indemnify and keep Telecel indemnified from, defend Telecel against, and pay any final judgment awarded against Telecel, resulting from third party claims arising from the use of the Services leading to loss or damage (including consequential loss or damage) where the proximate cause of such loss or damage is attributable to the Merchant's negligence, recklessness, indifference, delay or failure to receipt or acknowledge a Customer's Payment after the Customer has effected a Merchant Transaction to the Merchant on the TeleCash System.

11.5 Telecel shall not be liable to the Merchant or any other person where:

11.5.1 The Transaction amount sought by the Customer is below the minimum or above the maximum limits for transactions on the TeleCash System as set out in Tariff Schedule.

11.5.2 The Customer has entered incorrect details and the payment is made to the wrong account;

11.5.3 The Merchant's hardware, software or internet provider's service is not functioning properly;

11.5.4 The transaction is suspicious or fraudulent resulting in losses to a third party;

11.5.5 The transaction details received do not contain the correct information;

11.5.6 The Merchant's receipt of funds is intercepted by legal process or other encumbrance restricting the transfer; or

11.5.7 Unforeseen circumstances prevent the execution of a Transaction despite any reasonable precautions taken by Telecel.

11.6 Without prejudice to any other provisions of this Agreement, each of Telecel and the Merchant undertakes to indemnify the other party and keep the other party indemnified on demand for and against all proceedings, costs, claims, damages, expenses and liabilities of whatsoever nature howsoever suffered or incurred arising out of or by reason of:

11.6.1 Any breach or non-compliance with any terms of this Agreement; or;

11.6.2 Any infringement or alleged infringement of any intellectual property rights relating to the use of any software by any person.

## **12. DISPUTE RESOLUTION**

12.1 In the event of any dispute between the parties arising from this Agreement, the parties shall endeavour to resolve it by negotiation between their authorized representatives within seven (7) days of such dispute arising.

12.2 In the event that the parties fail to reach agreement within the aforesaid period of seven (7) days, either party may refer the dispute to arbitration.

- 12.3 Notwithstanding anything to the contrary contained in this clause neither party shall be precluded from obtaining interim relief from a court of competent jurisdiction including any arbitral tribunal pending the decision of an arbitral tribunal appointed in terms of this clause.
- 12.4 The arbitration shall be held:
- 12.4.1 In Harare, Zimbabwe; and
- 12.4.2 With such legal and other professional representatives as the parties may require; and
- 12.4.3 In terms of the Arbitration Act (*Chapter 7:15*), as amended from time to time, it being the intention of the parties that the arbitration proceedings shall be held and completed as soon as possible.
- 12.4.4 The arbitrator shall be, if the matter in dispute is principally:
- 12.4.4.1 A legal matter, a registered legal practitioner of at least fifteen (15) years' standing;
- 12.4.4.2 An accounting matter, a practicing chartered accountant of at least fifteen (15) years' standing;
- 12.4.4.3 Any other matter, an independent person who is an expert in the field in which the dispute has arisen, agreed upon between the parties.
- 12.5 Should the parties fail to agree whether the dispute is principally a legal, accounting or other matter within seven (7) days after the parties' agreement to refer the dispute to arbitration, the matter shall be deemed to be a legal matter.
- 12.6 Should the parties fail to agree on an arbitrator within seven (7) days after the matter was referred to arbitration in terms of clause 12.5 hereof, the arbitrator shall be appointed at the request of either party to the dispute by the Executive Secretary of the Law Society.
- 12.7 The decision of the arbitrator shall be final and binding on the parties and may be made an order of the court referred to in clause 12.6 at the instance of either of the parties.
- 12.8 The provisions of this clause:
- 12.8.1 Constitute an irrevocable consent by the parties to any proceedings in terms of this clause and neither party shall be entitled to withdraw therefrom or to claim in any such proceedings that it is not bound by such provisions.
- 12.8.2 is severable from the Agreement and shall remain in effect despite the termination of or invalidity for any reason of this or any part of Contract.
- 13. MUTUAL CO-OPERATION**
- The Parties undertake to act in good faith with respect to each other's rights under this Agreement and to adopt all reasonable measures to ensure the realization of the objectives of this Agreement.
- 14. ENTIRE AGREEMENT**
- This Agreement, together with the schedules hereto, constitutes the entire agreement between the Merchant and Telecel with respect to the subject matter hereof. There are no restrictions, promises, warranties, covenants or undertakings other than those expressly set forth herein and therein. This Agreement supersedes all prior negotiations, agreements, and undertakings between the parties with respect to such matter.
- 15. AMENDMENT**
- This Agreement, including its schedules may be amended by Telecel by way of bulletin, and notices. The Merchant acknowledges that such bulletin or notices shall be binding and shall have full legal force as if they were contained in this Agreement.
- 16. ASSIGNMENT**
- This Agreement may not be assigned by either party, by operation of law or otherwise, without the prior written consent of the other party.
- 17. HEADINGS**
- Headings in this Agreement are for reference purposes only and shall not effect the interpretation or meaning of this Agreement
- 18. NOTICES**
- Except as otherwise specified in the Agreement, all notices, requests, approvals, consents and other communications required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by mail, registered or certified, return receipt requested, postage pre-paid, courier service to the address to the address specified above. Notices shall be deemed given on the day actually received by the party to whom the notice is addressed.
- 19. WAIVER**
- No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by any party of any breach or covenant shall not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the party waiving its rights.
- 21. SEVERABILITY**
- Any provision of this Agreement held by a court of competent jurisdiction to be contrary to any law shall be severed from the agreement, but such severance shall not render the remaining provisions of this agreement ineffective. The remaining provisions of this Agreement will remain in full force and effect.
- 22. NO THIRD PARTY BENEFICIARIES**
- Each party intends that this Agreement shall not benefit, or create any enforceable right or cause of action in or on behalf of, any person or entity other than the Telecel and the Merchant.
- 23. FORCE MAJEURE**

- 23.1 Notwithstanding any provision contained in this Agreement, neither Party shall be liable to the other Party for any delay or failure to perform its obligations under the Agreement as a result of revolution or other civil disorders; belligerent aggression by an enemy or war; strikes; lack of available resources from persons other than parties to this Agreement; labour disputes; electrical equipment or system availability delay or failure; fire; floods; acts of God; government or regulatory intervention; or, without limiting the foregoing, any other causes not within its control, and which by the exercise of reasonable diligence it is unable to prevent, whether of the class of causes hereinbefore enumerated or not.
- 23.2 Upon the occurrence of any Force Majeure event, the affected party will promptly give written notice to the other party and will use commercially reasonable efforts to minimize the impact of such Force Majeure event.

**24. GENERAL**

- 24.1 The parties shall comply with all legal requirements applicable to their role in effecting Transactions.
- 24.2 Legal or regulatory requirements may require Telecel to obtain and report certain information about the operation of the In order to comply with any such legal or regulatory requirements, Telecel may at any time submit such information as it may have in its possession to the legal or regulatory authority. The Merchant shall assist Telecel in complying with any such legal or regulatory requirements and shall deliver promptly any information that Telecel reasonably requests for the purposes of complying with such legal or regulatory requirements.
- 24.3 None of the Parties shall at any time publish or cause to be published orally or in writing to any other person whatsoever (including to the public or any section of the public) any information concerning this Agreement or any other information of any nature whatsoever concerning either Party or any other matter regarding the internal affairs of either Party, whether such information or matter is stated to be confidential or not, without the express written permission of the other Party . This covenant is given by the Merchant and Telecel on their own behalf and the parties also undertake to ensure that they will take all reasonable steps to enforce obligations in like form against its directors and personnel.
- 24.4 Each of the Parties shall, at its expense, obtain and renew, in accordance with any law or regulations for the time being in force, all permits, licences and authorisations required for the performance of its obligations under this Agreement.
- 24.5 Where the Merchant integrates its Point of Sale terminal with the TELECASH System, Telecel may, at its expense, conduct by itself, or commission a third party to conduct, a systems audit to test the system integrity of the Merchant.

**25. GOVERNING LAW AND JURISDICTION**

The validity, construction and interpretation of this Agreement and the rights and duties of the parties hereto shall be governed by the laws of Zimbabwe.

**26. DOMICILIUM CITANDI ET EXECUTANDI**

The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement the following addresses

- 26.1 Telecel Zimbabwe (Private) Limited  
No. 148 Seke Road  
Graniteside  
Harare

- 26.2 The Merchant

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

THUS DONE AND SIGNED AT \_\_\_\_\_ . ON THIS \_\_\_\_\_ DAY OF

\_\_\_\_\_ 20 \_\_\_\_ IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:

AS WITNESSES

1. \_\_\_\_\_
2. \_\_\_\_\_

\_\_\_\_\_  
 FOR AND ON BEHALF OF THE MERCHANT

THUS DONE AND SIGNED AT \_\_\_\_\_ . ON THIS \_\_\_\_\_ DAY OF

\_\_\_\_\_ 20 \_\_\_\_ IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:

AS WITNESSES

1. \_\_\_\_\_
2. \_\_\_\_\_

\_\_\_\_\_  
 FOR AND ON BEHALF OF TELECEL ZIMBABWE (PVT) LIMITED

**SUPPORTING DOCUMENTS:**

All applicants must submit the documents enlisted below:

- I. Duly signed out Telecel Merchant Application form
- II. Certified copy of Certificate of Incorporation
- III. Certified copy of CR14
- IV. Certified copy of Tax Clearance
- V. Coloured passport photo of the Directors
- VI. Certified copies of National Identity Documents
- VII. Physical address of one permanent outlet



VII Valid Trading licence.